

State of Utah
Administrative Rule Analysis
Revised May 2020

OUR File NO. 53287

Date Filed: 1-19-2021

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ☐; Amendment XXX; Repeal ☐; Repeal and Reenact ☐

Title No. - Rule No. - Section No.

Utah Admin. Code Ref (R no.):

R156-72

Filing No. (Office Use Only)

Changed to Admin. Code Ref. (R no.):

Agency Information

1. Department:	Commerce	
Agency:	Division of Occupational and Professional Licensing	
Room no.:		
Building:	Heber M Wells	
Street address:	160 East 300 South	
City, state:	SLC UT 84111	
Mailing address:	PO Box 146741	
City, state, zip:	SLC UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Larry Marx	801-530-6254	lmarx@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Acupuncture Licensing Act Rule

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):

This filing amends the rule to clarify the practice of acupuncture within the scope of the statutory changes made by 2019 SB 157 to define injection therapy, and to update licensure by endorsement procedures in accordance with 2020 HB 23. These amendments update references and clarify what constitutes informed consent for patients and what constitutes unprofessional conduct for practicing herbal medicine beyond the scope of the licensee's education and training.

4. Summary of the new rule or change:

R156-72-102 is amended to update and clarify definitions and references in accordance with the statutory changes made by 2019 SB 157 and recommendations made by the Board. This includes defining the phrase "according to practitioner training" and the term "modern research" as used in Subsection 58-72-102(5)(b)(ii).

R156-72-302a is amended in its entirety to add new language clarifying the certification requirements of Subsection 58-72-302(3) and the examination requirements of Subsection 58-72-302(3), to allow an applicant to submit proof of current and active NCCAOM certification, or licensure in good standing as an acupuncturist in any US state, district, or territory for at least one year immediately preceding the application.

R156-72-302b is amended to clarify that the 50 hours of on the job training to engage in animal acupuncture may be under the "indirect" supervision of a licensed veterinarian.

R156-72-302c regarding informed consent is amended to add that if a patient will be receiving an adjunctive therapy the acupuncturist shall provide a written disclosure regarding the acupuncturist's education and training to perform that therapy, and amended to clarify that records shall be maintained for seven years.

R156-72-302d regarding unprofessional conduct is renumbered to R156-72-503 to conform to the practice act, and is amended to (1) clarify what constitutes violating renewal qualifications, (2) change the reference to the medical

records retention requirement from ten to seven years, and (3) define as unprofessional conduct failing to maintain current and active NCCAOM certification, failing to maintain current CPR/BLS certification, or recommending, administering, or providing dietary guidelines, herbs, supplements, homeopathics, or therapeutic exercise without having completed the required "practitioner training" as defined in new Subsection R156-72-102(2).

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Division estimates that these proposed amendments will have no measurable impact on state government revenues or expenditures as they merely clarify and define terms and update references in accordance with statutory changes. The amendment and restatement of Subsection R156-72-302a is expected to have no impact on the Division or other state agencies as it only provides additional exam options for licensees and greater license portability. The amendments to newly renumbered Subsection R156-72-503 are not expected to impact the Division as they only more precisely define what constitutes unprofessional conduct. Additionally, as described below in the analysis for small business and non-small business, the Division does not expect any state governments that may be acting as employers of licensed individuals engaging in the practice of acupuncture to experience any measurable fiscal impacts.

B) Local governments:

The Division estimates that these proposed amendments will have no measurable impact on local government revenues or expenditures as they will not impact local government practices or procedures. Additionally, as described below in the analysis for small business and non-small business, the Division does not expect any local governments that may be acting as employers of licensed individuals engaging in the practice of acupuncture to experience any measurable fiscal impacts.

C) Small businesses ("small business" means a business employing 1-49 persons):

These proposed amendments will regulate individuals licensed under Title 58, Chapter 72 who are practicing or apply for licensure as an acupuncturist, and may therefore indirectly affect the estimated 300 small businesses in Utah comprising establishments of licensees engaged in the practice of acupuncture or who may employ those engaged in the practice of acupuncture, such as private or group practices (NAICS 621399). However, as described below for other persons, these proposed amendments are not expected to have a measurable impact on individual small business owners or employees and therefore will not indirectly impact small business revenue or expenditures.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

These proposed amendments will regulate individuals licensed under Title 58, Chapter 72 who are practicing or apply for licensure as an acupuncturist, and may therefore indirectly affect the estimated 25 non-small businesses in Utah comprising establishments of licensees engaged in the practice of acupuncture or who may employ those engaged in the practice of acupuncture, such as private or group practices, hospitals, or medical centers (NAICS 621111). However, as described below for other persons, these proposed amendments are not expected to have a measurable impact on individual non-small business owners or employees and therefore will not indirectly impact non-small business revenue or expenditures.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):

There are 172 licensed acupuncturists and approximately seven potential applicants for licensure each year who will be subject to these amendments. However, no measurable fiscal impact to these persons is expected. The amendments to newly renumbered Subsection R156-72-503 are not expected to result in a measurable impact on licensees as they only more precisely define what constitutes unprofessional conduct, and the practices of most licensees are or should be already consistent with these professional practice standards. Additionally, these amendments will only affect licensees who violate the rules and are disciplined for unprofessional conduct, and it is impossible to estimate what these potential indirect costs might be with any accuracy because they will vary widely depending on the individual characteristics and actions of each licensee, and this relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive. The remaining amendments are not expected to have any measurable impact on these persons as the amendments are made in accordance with statutory changes to clarify the services within the acupuncturist scope of practice and informed consent requirements for an acupuncturist, and to clarify the pathway to Utah licensure for a person who may wish to apply by endorsement.

F) Compliance costs for affected persons:

As described above for other persons, the Division does not anticipate any compliance costs for any affected persons from these proposed amendments.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The head of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Division of Occupational and Professional Licensing proposes amendments to the Acupuncture Licensing Act Rule. This filing harmonizes the statutory changes with the corresponding rule. Modifications to the statute for the practice of acupuncture were made in the 2019 General Session, S.B. 157, to define injection therapy, and to update licensure by endorsement in accordance with the 2020 General Session, H.B. 23. Further, these amendments update references, clarify informed consent and unprofessional conduct, and determine the scope of the licensee's education and training.

Small Businesses (less than 50 employees):

In Utah, there may be approximately 300 small business establishments that are affiliated with licensees engaged in the practice of acupuncture or who may employ those engaged in the practice of acupuncture, such as private or group practices (NAICS 621399). However, no fiscal impact is expected for small business over and above any fiscal impact described in the legislative fiscal notes S.B. 157 in the 2019 General Session and for H.B. 23 from the 2020 General Session as these costs are either inestimable or there is no fiscal impact.

Regulatory Impact to Non-Small Businesses (50 or more employees)

There are 25 non-small businesses that associate with licensees engaged in the practice of acupuncture or who may employ those engaged in the practice of acupuncture, such as private or group practices, hospitals, or medical centers in Utah (NAICS 621111). However, this amendment is conforming the rule to the statutory changes made by 2019 S.B. 157 and 2020 H.B. 23. It is not expected to impact these non-small businesses beyond expectations in the legislative fiscal notes. Similar to the above mentioned costs in small business, further costs are either inestimable, for the reasons stated, or there is no fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Margaret W. Busse, Interim Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 58-72-101

Subsection 58-1-106(1)(a)

Subsection 58-1-202(1)(a)

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; if none, leave blank):

	First Incorporation
Official Title of Materials Incorporated (from title page)	NCCAOM Code of Ethics (Updates)
Publisher	National Commission for the Certification of Acupuncture and Oriental Medicine (NCCAOM)
Date Issued	
Issue, or version	January 1, 2016

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; if none, leave blank):

	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 03/17/2021

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):
02/16/2021	9:00 AM	For electronic Google Meets information for this rule hearing, see the Acupuncture Licensing Board February 16, 2021 agenda for this meeting date on the Public Meeting Notice website.

10. This rule change MAY become effective on (mm/dd/yyyy): 03/24/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

Agency head or designee, and title: Mark B. Steinagel, Director Date (mm/dd/yyyy): 01/19/2021

R156. Commerce, Occupational and Professional Licensing.

R156-72. Acupuncture Licensing Act Rule.

R156-72-102. Definitions.

In addition to the definitions in Title 58, Chapter[s] 1, Division of Occupational and Professional Licensing Act, and Title 58, Chapter 72, Acupuncture Licensing Act, the following rule definitions supplement the statutory definitions~~[as used in this rule]~~:

(1) "ACAOM" means the Accreditation Commission for Acupuncture and Oriental Medicine.

(2) "According to practitioner training" in Subsection 58-72-102(5)(b)(ii) means that the licensee has completed education and training from an educational program accredited or recognized by ACAOM regarding the recommendation, administration, or provision of dietary guidelines, herbs, supplements, homeopathics, and therapeutic exercise.

~~([1]3) [(a)]~~ "Administration"~~[, as used]~~ in Subsection 58-72-102(~~[4]5~~)(b)(ii)~~[,]~~ means the direct application of an herb, homeopathic, or supplement to the body of a patient by:

~~([1]a)~~ ingestion;

~~([1]b)~~ topical application;

~~([1]c)~~ inhalation; or

~~([1]d)~~ [acupoint injection therapy ([A]PIT)].

~~(b) Administration does not include:~~

~~(i) venous injections;~~

~~(ii) immunizations;~~

~~(iii) legend drugs; or~~

~~(iv) controlled substances.~~

~~(2) "Controlled substance" means a drug or substance defined in Subsection 58-37-2(1)(f).~~

~~(3) "Legend drug" means a prescription drug as defined in Subsections 58-17b-102(32) and (64).~~

(4) "Herbs" and "homeopathics"~~[, as used]~~ in Subsection 58-72-102(~~[4]5~~)(b)(ii)~~[,]~~ may include:

(a) vitamins;

(b) minerals;

(c) amino acids;

(d) proteins; and

(e) enzymes.

(5) "Insertion of acupuncture needles" in Subsection 58-72-102(5)(a) means a procedure of acupuncture and oriental medicine ~~[which includes]~~ including myofascial trigger point therapy, intramuscular therapy, perineural injection therapy (PIT), prolotherapy, proprioceptive stimulation, ~~[Ashi]~~ Ashi points, ~~[and] or~~ dry needling techniques.

(6) "Modern research" in Subsection 58-72-102(5)(b)(ii) means practicing according to acupuncture and oriental medicine education and training as recognized through NCCAOM.

(~~[6]7~~) "NCCAOM" means the National Commission for the Certification of Acupuncture and Oriental Medicine, ~~[,]~~ formerly known as the National Commission for the Certification of Acupuncturists (NCCA).

~~(7) "Modern research" means practicing according to acupuncture and oriental medicine training as recognized through NCCAOM.~~

~~(8) "Provision", as used in Subsection 58-72-102(4)(b)(ii), includes~~

~~procurement of the substances listed in Subsection 58-72-102(4)(b)(ii).~~

R156-72-302a. Qualifications for Licensure - ~~[Examination]~~Certification and Exam Requirements.

~~[In accordance with Subsection 58-72-302(5), the examination requirement for licensure is a passing score as determined by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) on all examinations for certification by NCCAOM in acupuncture or oriental medicine.]~~

In accordance with Subsections 58-72-302(3) and (4), to meet the requirements for current active certification in acupuncture under guidelines established by NCCAOM, and the requirements for passing the examination required by the Division, an applicant for licensure as a licensed acupuncturist shall submit documentation of:

- (1) current and active NCCAOM certification; or
- (2) pursuant to Subsection 58-1-302(1), licensure in good standing as an acupuncturist in any state, district, or territory of the United States, for at least one year immediately preceding the application.

R156-72-302b. Qualifications for Licensure - Animal Acupuncture.

In accordance with Subsections 58-28-307(12)(d) and 58-72-102([4]5)([a]b)(iii), to engage in the practice of animal acupuncture, a licensed acupuncturist ~~[practicing animal acupuncture must]~~ shall complete 100 hours of animal acupuncture training and education that includes: [The training and education shall include:]

- (1) ~~[completing 50]~~ fifty hours of on the job training under the indirect supervision of a licensed veterinarian;
- (2) ~~[completing]~~ animal anatomy training; and
- (3) ~~[completing]~~ the remaining hours in animal specific continuing education.

R156-72-302c. Informed Consent.

(1) In accordance with Subsection 58-72-302([6]5), ~~[in order for]~~ to enable patients to give informed consent to treatment, a licensed acupuncturist shall have a patient chart for each patient ~~[which shall include]~~ that includes:

- ([1]a) a written review of symptoms; ~~[and]~~
- ([2]b) a statement ~~[7]~~ signed by ~~[that]~~ the patient ~~[, that consent is given to provide]~~ consenting to acupuncture treatment; and ~~[7]~~
- (c) if the patient is receiving an adjunctive therapy as defined in Subsection 58-72-102(5), a written disclosure signed by the patient regarding the licensed acupuncturist's education and training to perform that therapy.

(2) In accordance with Section 58-72-503, patient records, including records documenting informed consent, shall be maintained for seven years.

R156-72-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 72, Acupuncture Licensing Act, is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308[e]b through R156-1-308l.

(3) In accordance with ~~[Section]~~ Subsections 58-1-308(3)(b) and 58-72-303(3), a licensee ~~[must]~~ who does not maintain current and active NCCAOM certification shall:

(a) complete at least 30 continuing education units (CEU) or 30 professional didactic activity (PDA) points within the two-year renewal period; and

(b) maintain current BLS-CPR certification.

R156-72-~~[302d]~~503. Unprofessional Conduct.

In accordance with Subsection 58-72-102(6),
"unprofessional [~~Unprofessional~~] conduct" includes:

(1) failing to maintain office, instruments, equipment, appliances,
[and] or supplies in a safe and sanitary condition;

(2) [failing as a licensee to] violating Subsection 58-72-303(3)
regarding renewal qualifications by: [~~maintain the professional~~
development activity requirements, as required by the NCCAOM;]

(a) failing to maintain current and active NCCAOM certification;

(b) failing to complete all CEUs required under Subsection R156-72-
303(3); or

(c) failing to maintain current BLS-CPR certification.

(3) failing to abide by [~~and meet standards of~~] the [~~"]~~ NCCAOM Code
of Ethics [~~" set by NCCAOM, adopted on October 14, 2008]~~ revised January 1,
2016, that is [~~which are~~] hereby incorporated by reference;

(4) failing to maintain [~~medical~~] patient records for a [~~ten~~] seven-
year period

(5) [failing to obtain education and training recognized by NCCAOM
if performing acupoint therapy injections; and] recommending,
administering, or providing dietary guidelines, herbs, supplements,
homeopathics, or therapeutic exercise without having completed the
required practitioner training pursuant to Subsection 58-72-102(5)(b)(ii)
and Subsection R156-72-102(2); or

(6) administering venous injections, immunizations, [~~legend drugs~~
and] or controlled substances.

KEY: acupuncture, licensing

Date of Enactment or Last Substantive Amendment: [January 23, 2018] 2021

Notice of Continuation: September 8, 2016

Authorizing, and Implemented or Interpreted Law: 58-72-101; 58-1-
106(1)(a); 58-1-202(1)(a)